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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,327

04/16/2004

Gary L. Cummings

A8735

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23373 7590 01/28/2008  
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WASHINGTON, DC 20037

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1615

MAIL DATE	DELIVERY MODE
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01/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/825,327

Applicant(s)

CUMMINGS ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 69-87 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 83-87 is/are allowed.
- 6) ☒ Claim(s) 69-82 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

**Applicant failed to identify all claims in the case; 1-68 had been cancelled**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

Claims 69-71, 73-78, 80, 81 are rejected under 35 U.S.C. 102(b) as being anticipated by CUMMINGS us005369100a .

1-100% of Acephate (col. 5, lines 39-48) can be formulated to be stable; no water is needed, & processing aids are kept to a minimum. These include polymeric binders (col. 7, lines 31-39). Flowability aids to keep it free flowing, are at 0.5-5%, if used (col. 7, lines 12-25). The forms are the instant pellets, sheets, rods, spheres (col. 8, lines 34, 41-47), no size being specified as instantly claimed. Although the description distinguishes from pelletization, in fact the formulation is the same, only the shape differs, & the pellet form is in fact produced, then crushed. Thus, the instant claims are met. NO organic solvents need be used.

Claims 69, 72-76, 79-82 are rejected under 35 U.S.C. 102(b) as being anticipated by CHAN et al WO 91/11104

See page 6; acephate pellets of the instant stable, hard, bulk density form, without organic solvents, & with polymeric processing aids at low concentration (page 7, last paragraph) are already known.

Claims 69,74-76,81 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over MISSELBROOK et al US005160530A

Pellets of 5-75% active, inclusive of acephate(col. 6, lines 15 -21) with PVP & or other polymeric processing aids(lines 32-48) at up to 10%.The pellets are dried, thus substantially free of water(examples).

Claims 69-71,73-78,80 & 81 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chan et al 5464623. Acephate pellets 0 97-98.5%, with I processing aid 2%, inclusive of dehydrators to absorb TRACE amounts of water are taught. The ingredients are dry, & heated. Preferred solvent is methylene chloride, not water (col 5). There is no water present-thus meeting the instant claim to up to 5%, absent any showing to the contrary by applicant. We would consider trace amounts to be 0.5%. The pellets are free flowing; that is what the invention was directed to achieving (col 2, lines 58-line 5 col 3).

Claims 69-82 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over YAMADA et al 5488043.

***Allowable Subject Matter***

Claims 83-87 are allowed.

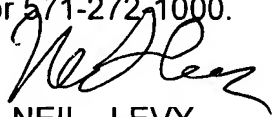
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NEIL LEVY  
Primary Examiner  
Art Unit 1615

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